

## **List of Attachments for Item No. 24**

### **– RMC Agreements**

#### **Attachments:**

- 24-A      Consultant Agreement for Recycled Water Pipeline Extension / Grant
- 24-B      Consultant Agreement for Augustine Park and Community Garden Conversion
- 24-C      Amendment No. 2 for Utility Backfill Support
- 24-D      Budget Change Form (BCF)

**CONSULTING SERVICES AGREEMENT BETWEEN  
THE CITY OF MILPITAS AND  
RMC WATER & ENVIRONMENT, INC.**

THIS AGREEMENT for consulting services is made by and between the City of Milpitas, a Municipal Corporation of the State of California (hereafter referred to as "CITY") and RMC Water & Environment, Inc., a California Corporation (referred to herein as the "Consultant") as of June 16, 2015.

**AGREEMENT**

**Section 1. SERVICES.** Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City the services described in the Scope of Work attached as Exhibit A at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

- 1.1 Term of Services.** The term of this Agreement shall begin on the date first noted above and shall end on June 30, 2016, the date of completion specified in Exhibit A, and Consultant shall complete all the work described in Exhibit A prior to that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as provided for in Section 8.
- 1.2 Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement in the manner and according to the professional standards normally observed by a practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession. Consultant shall prepare all work products required by this Agreement in a substantial manner and shall conform to the professional standards of quality normally observed by a person practicing in Consultant's profession.
- 1.3 Professional Skill.** It is mutually agreed by the parties that City is relying upon the professional skill of the consultant as a specialist in the work, and Consultant represents to the City that its work shall conform to the normal professional standards of the profession. Acceptance of the Consultant's work by the City does not operate as a release of Consultant's representations. It is intended that Consultant's work shall conform to normal standards of accuracy, completeness and coordination.
- 1.4 Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. Exhibit A shall name any specific personnel who shall be performing services. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.

- 1.5 **Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.1 above and to complete Consultant's obligations hereunder.

**Section 2. COMPENSATION.** City hereby agrees to pay Consultant a guaranteed maximum price not to exceed Four Hundred Eighty Two Thousand Seven Hundred Ninety Two Dollars (\$482,792.00) for all services to be performed and reimbursable costs incurred under this Agreement. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City, Consultant shall not bill City for duplicate services performed by more than one person.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Hourly rates for personnel performing services shall be as shown in Exhibit B. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

- 2.1 **Invoices.** Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred during the billing period. Invoices shall contain the following information:

- Serial identification of bills;
- The beginning and ending dates of the billing period;
- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion, if applicable;
- At City's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
- The total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder, as well as a separate notice when the total number of hours of work by Consultant and any individual employee, agent, or subcontractor of Consultant reaches or exceeds 800 hours, which shall include an estimate of the time necessary to complete the work described in Exhibit A;
- The Consultant's signature.

- 2.2 **Monthly Payment.** City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall have thirty (30) days from the receipt of an invoice that complies with all of the requirements above and is otherwise acceptable to the City to pay Consultant. In the event that an invoice is not acceptable to the City, said invoice shall be returned to

Consultant within thirty (30) days of the City's receipt of the invoice with a detailed explanation of the deficiency. City's obligation to pay a returned invoice shall not arise earlier than thirty (30) days after resubmission of the corrected invoice.

- 2.3 Total Payment.** City shall pay for the services to be rendered by Consultant pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement.

In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment. In the event that Consultant identifies additional work outside the scope of services specified in Exhibit A that may be required to complete the work required under this Agreement, Consultant shall immediately notify the City and shall provide a written not-to-exceed price for performing this additional work.

- 2.4 Hourly Fees.** Fees for work performed by Consultant on an hourly basis shall not exceed the amounts shown on Exhibit B.
- 2.5 Payment of Taxes.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any other applicable federal or state taxes.
- 2.6 Reimbursable Expenses.** Reimbursable expenses are shown on Exhibit B, and shall not exceed Ten Thousand dollars (\$10,000.00) under the Agreement, unless pre-approved in writing by the City. Expenses not listed in Exhibit B are not chargeable to City. Reimbursable expenses are included in the total not-to-exceed amount of compensation provided under this Agreement.
- 2.7 Payment upon Termination.** In the event that the City or Consultant terminates this Agreement pursuant to Section 8, the City shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets in order to verify costs incurred to that date. The City shall have no obligation to compensate Consultant for work not verified by logs or timesheets.
- 2.8 Authorization to Perform Services.** The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of a written Notice to Proceed from the City.

**Section 3. FACILITIES AND EQUIPMENT.** Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. City shall make available to Consultant only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

City shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Consultant's use while consulting with City employees and reviewing records and the information in possession of the City. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of City. In no event shall City be obligated to furnish any facility that may involve incurring any direct expense, including but not limited to computer, cellular telephone, long-distance telephone, or other communication charges, vehicles, and reproduction facilities.

If the performance of the work specified in Exhibit A requires destructive testing or other work within the City's public right-of-way, Consultant, or Consultant's subconsultant, shall obtain an encroachment permit from the City.

**Section 4. INSURANCE REQUIREMENTS.** Before beginning any work under this Agreement, Consultant shall procure "occurrence coverage" insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant and its agents, representatives, employees, and subcontractors. Consultant shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects to the City. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement and shall produce said policies to the City upon demand. The cost of such insurance shall be included in the Consultant's price. Consultant shall not allow any subcontractor to commence work on any subcontract until Consultant has obtained all insurance required herein for the subcontractor(s) and provided evidence thereof to City. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution.

- 4.1 Workers' Compensation.** Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per accident. In the alternative, Consultant may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the City Attorney. The insurer, if insurance is provided, or the Consultant, if a program of self-insurance is provided, shall waive all rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

An endorsement shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

**4.2 Commercial General and Automobile Liability Insurance.**

- 4.2.1 General requirements.** Consultant, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or

an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

**4.2.2 Minimum scope of coverage.** Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (ed. 11/88) or Insurance Services Office form number GL 0002 (ed. 1/73) covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (ed. 12/90) Code 1 ("any auto"). No endorsement shall be attached limiting the coverage.

**4.2.3 Additional requirements.** Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:

- a. City and its officers, employees, agents, contractors, consultants, and volunteers shall be covered as insureds with respect to each of the following: liability arising out of activities performed by or on behalf of Consultant, including the insured's general supervision of Consultant; products and completed operations of Consultant; premises owned, occupied, or used by Consultant; and automobiles owned, leased, or used by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to City or its officers, employees, agents, contractors, consultants, or volunteers.
- b. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- c. An endorsement must state that coverage is primary insurance with respect to the City and its officers, officials, employees, contractors, consultants, and volunteers, and that no insurance or self-insurance maintained by the City shall be called upon to contribute to a loss under the coverage.
- d. Any failure of CONSULTANT to comply with reporting provisions of the policy shall not affect coverage provided to CITY and its officers, employees, agents, and volunteers.
- e. An endorsement shall state that coverage shall not be suspended, voided, or canceled by either party, reduced in coverage or in limits,

except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

- 4.3 Professional Liability Insurance.** If Consultant shall be performing licensed professional services, Consultant shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000) covering the licensed professionals' errors and omissions.

**4.3.1** Any deductible or self-insured retention shall not exceed \$150,000 per claim.

**4.3.2** An endorsement shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

**4.3.3** The policy must contain a cross liability clause.

**4.3.4** The following provisions shall apply if the professional liability coverages are written on a claims-made form:

- a. The retroactive date of the policy must be shown and must be before the date of the Agreement.
- b. Insurance must be maintained and evidence of insurance must be provided for at least three years after completion of the Agreement or the work, unless waived in writing by the City.
- c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant must provide extended reporting coverage for a minimum of five years after completion of the Agreement or the work. The City shall have the right to exercise, at the Consultant's sole cost and expense, any extended reporting provisions of the policy, if the Consultant cancels or does not renew the coverage.
- d. A copy of the claim reporting requirements must be submitted to the City prior to the commencement of any work under this Agreement.

**4.4 Requirements for All Policies.**

**4.4.1 Acceptability of insurers.** All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A.

**4.4.2 Verification of coverage.** Prior to beginning any work under this Agreement, Consultant shall furnish City with certificates of insurance and with original endorsements effecting coverage required herein. The certificates and

endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The City reserves the right to require complete, certified copies of all required insurance policies at any time.

**4.4.3 Subcontractors.** Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

**4.4.4 Deductibles and Self-Insured Retentions.** Consultant shall disclose to and obtain the approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement.

During the period covered by this Agreement, only upon the prior express written authorization of the City, Consultant may increase such deductibles or self-insured retentions with respect to City, its officers, employees, agents, contractors, consultants, and volunteers. The City may condition approval of an increase in deductible or self-insured retention levels with a requirement that Consultant procure a bond, guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to the City.

**4.4.5 Notice of Reduction in Coverage.** In the event that any coverage required by this section is reduced, limited, or materially affected in any other manner, Consultant shall provide written notice to City at Consultant's earliest possible opportunity and in no case later than five days after Consultant is notified of the change in coverage.

**4.5 Remedies.** In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Consultant's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or
- Declare Consultant in material breach of the Agreement and terminate the Agreement.

**4.6 Waiver.** The Risk Manager of the City has the authority to waive or vary any provision of Sections 4.2 through 4.5. Any such waiver or variation shall not be effective unless made in writing.

**Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.** Consultant shall indemnify, defend with counsel reasonably acceptable to the City, and hold harmless the City and its officials, officers, employees, agents, contractors, consultants, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts or omissions of Consultant or its employees, subcontractors, or agents, by acts for which they could be held strictly liable, or by the quality or character of their work. The foregoing obligation of Consultant shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the negligence or willful misconduct of the City or its officers, employees, agents, contractors, consultants, or volunteers and (2) the actions of Consultant or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

**Section 6. STATUS OF CONSULTANT.**

- 6.1 Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3. Otherwise, City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.

- 6.2 **Consultant No Agent.** Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

**Section 7. LEGAL REQUIREMENTS.**

- 7.1 **Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 **Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.
- 7.3 **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.
- 7.4 **Licenses and Permits.** Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to City that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions and to perform this Agreement. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid business license from City.
- 7.5 **Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Consultant shall include the provisions of this Subsection in any subcontract approved by the City or this Agreement.

**Section 8. TERMINATION AND MODIFICATION.**

- 8.1 **Termination.** City may terminate this Agreement at any time and without cause upon written notification to Consultant.

In the event of termination, Consultant shall be entitled to compensation for services performed prior to the effective date of termination as provided in Section 2. City, however, may condition payment of such compensation upon Consultant delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement.

- 8.2 Extension.** City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Consultant understands and agrees that, if City grants such an extension, City shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the City, City shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.
- 8.3 Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.
- 8.4 Assignment and Subcontracting.** City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the City. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors listed in the Consultant's proposal, without prior written approval of the City.
- 8.5 Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.
- 8.6 Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, any or all of the following:
- 8.6.1** Immediate cancellation of the Agreement;
  - 8.6.2** Retention of the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement prior to cancellation; and
  - 8.6.3** Retention of a different consultant at Consultant's cost to complete the work described in Exhibit A not finished by Consultant.

**Section 9. KEEPING AND STATUS OF RECORDS.**

- 9.1 Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City at any time upon demand of the City. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. Failure by Consultant to deliver these documents to the City within the time period specified by the City shall be a material breach of this Agreement. City and Consultant agree that, until final approval by City, all data, plans, specifications, reports and other documents are preliminary drafts not kept by the City in the ordinary course of business and will not be disclosed to third parties without prior written consent of both parties.
- 9.2 Consultant's Books and Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.
- 9.3 Inspection and Audit of Records.** Any records or documents that Section 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of three (3) years after final payment under the Agreement.

## **Section 10 MISCELLANEOUS PROVISIONS.**

- 10.1 Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 10.2 Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Santa Clara or in the United States District Court for the Northern District of California.
- 10.3 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so

adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

- 10.4 No Implied Waiver of Breach.** The waiver of performance or any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.
- 10.6 Use of Recycled Products.** Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.
- 10.7 Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

Consultant hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the City. If Consultant were an employee, agent, appointee, or official of the City in the previous twelve months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code §1090 *et seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, may be disqualified from holding public office in the State of California.

Consultant certifies that it has not paid any direct or contingent fee, contribution, donation or consideration of any kind to any firm, organization, or person (other than a bona fide employee of Consultant) in connection with procuring this Agreement, nor has Consultant agreed to employ or retain any firm, organization, or person in connection with the performance of this Agreement as a condition for obtaining this Agreement.

- 10.8 Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.

- 10.9 Contract Administration.** This Agreement shall be administered by City Engineer who is authorized to act for, and on behalf of, City. All correspondence shall be directed to or through the Contract Administrator or his or her designee.
- 10.10 Notices.** Any written notice to Consultant shall be sent to:
- Steve Bui  
RMC Water and Environment  
100 West San Fernando Street, Suite 320  
San Jose, CA 95113
- Any written notice to City shall be sent to:  
Steven Machida, Director of Engineering  
455 East Calaveras Boulevard  
Milpitas, California 95035
- 10.11 Professional Seal.** Where applicable in the determination of the City, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.
- 10.12 Integration.** This Agreement, including the exhibits, represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.
- 10.13 Exhibits.** All exhibits referenced in this Agreement are incorporated by reference herein.

CITY OF MILPITAS

CONSULTANT

\_\_\_\_\_  
Thomas C Williams, City Manager

\_\_\_\_\_  
Taxpayer Identification Number

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael J. Ogaz, City Attorney

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Steven J. Machida, Director of Engineering

**EXHIBIT A****SCOPE OF SERVICES FOR RECYCLED WATER PIPELINE EXTENSION**

This Project is a part of the City's efforts to respond to the ongoing drought by offsetting potable water and raw water used with recycled water. The proposed work includes conceptual design, environmental compliance documentation, and Proposition 1 funding application services for the Recycled Water Expansion Evaluation Project (Project). The Project involves the evaluation of five (5) phases extending the existing recycled water system easterly across I-680 to serve two golf courses, a commercial quarry, Ed Levin Park, a standpipe to serve the Cal Fire and Spring Valley Volunteer Fire Departments, landscaping for several schools and parks, and general Home Owners Association landscaping. The Project also includes coordination with potential future customers, City staff, South Bay Water Recycling (SBWR), and the State Water Resources Control Board Division of Drinking Water (DDW). Finally, the Project includes preparation of a CEQA-Plus document and Proposition 1 funding application.

**Task 1: Project Management**

Consultant will prepare monthly invoices, manage subconsultants, and coordinate with the City's Project manager. Consultant will monitor its activities against the Project schedule and track expenditures and progress against the scope of work. The budget includes project management for eight months.

**Task 1 Deliverables:**

Monthly invoice, progress report, and budget table.

**Task 2: Coordination with Potential Phase 3 Customers**

In support of the City's ongoing communication efforts with the golf courses, Consultant will assist with potential Phase 3 customer coordination including:

- Prepare for and participate in up to two (2) two-hour face-to-face meetings per customer for each of five (5) identified potential Phase 3 customers (for a total of up to ten (10) two-hour meetings) plus coordination time (e.g., scheduling, preparing materials and minutes, etc.).
- Prepare for and participate in up to two (2) two-hour face-to-face meetings with City staff to coordinate the conversion of potential Phase 3 customers to recycled water.
- Coordination with SBWR and DDW via telephone and email to obtain input on the preliminary alignment and potential Phase 3 conversions to ensure there are no fatal flaws with respect to permitting.

Consultant assumes that the City will provide contact information for the five potential Phase 3 customers, SBWR, and DDW.

**Task 2 Deliverables:**

- Meeting materials, agenda and minutes for each of the potential customer meetings.
- Meeting materials, agenda and minutes for each of the two meetings with City staff.

**Task 3: Alignment, Storage, and Pump Station Siting Study Technical Memorandum****Task 3.1 Alignment Study**

Consultant will conduct an alignment study for Phases 2, 3, 4, and 5. As part of this study, Consultant will evaluate pipeline alignment alternatives to the point of connection at each customer site as identified in the City's potential customer list (Attachment 1).

The alignment study will include evaluation/preparation of the following:

- Planning-level design and construction cost estimate per Phase (right-of-way costs not included);
- Operations & Maintenance considerations;
- Constructability (risk);
- Impacts to the local environment;
- Easement/right-of-way identification;
- Schedule for connecting to recycled water supply;
- Construction impacts on traffic;
- Permitting support needs for the main pipeline (i.e., not for service laterals or on-site connections);
- GIS generated map for each Phase (a total of 4 maps);
- Field verification of the meter locations for potential customers identified in Attachment 1; and
- Field verification of the feasibility of alignment alternatives.

This task includes four (4) five-hour site visits (generally, one site visit per Phase) for up to two (2) Consultant staff to perform field verifications. Findings of the Alignment Study will be presented in the Technical Memorandum, prepared under Task 3.4.

Consultant assumes the following:

- A total of nine alignments will be studied.
  - Phase 1 will not be included in the Alignment Study as it is currently under design as part of the Dempsey Project. For completeness, a brief summary of Phase 1 will be included in the TM.
  - Phases 2, 4, and 5 will each include up to two (2) alignments to be studied.
  - Phase 3 will include up to three (3) alignments to be studied, two of which will include the City-defined Old Calaveras Road and Country Club Road alignments.
- Right-of-way acquisition support beyond identifying potential right-of-way requirements is not included in this Scope of Work.
- Access to potential customer sites for meter verification (Attachment 1) is available for site visits without property-owner coordination or accompaniment.
- The City will provide right-of-way cost estimates.

- City's hydraulic modeling consultant will provide Consultant with hydraulic capacity and pipe size required for each alignment.

#### Task 3.2 Phase 3 Storage Recommendations

Consultant will provide recommendations for storage (i.e., tanks and reservoirs) on the hillside and specifically address the feasibility of Sandy Wool Pond as a potential storage reservoir. Recommendations will be presented in the Technical Memorandum, prepared under Task 3.4.

Consultant assumes the following:

- City's hydraulic modeling consultant will provide the necessary size(s) of the storage reservoir(s).
- The City will provide the purpose of the storage prior to Consultant beginning the recommendation process (i.e., for hillside customer storage or for system-wide operational storage).
- Meetings needed to discuss storage options with potential customers are included in Task 2.

#### Task 3.3 Phase 3 Pump Station Siting Study

Consultant will complete a siting study for potential Phase 3 pump station locations, including the following:

- Anticipated space requirements and identification of sites with adequate space;
- Identification of sites with appropriate access; and
- Community and local environmental impacts of each potential pump station site (e.g., noise, traffic, etc.).

This task includes one four (4) hour site visit for up to two (2) Consultant staff to field verify the potential site(s). Findings of the Pump Station Siting Study will be presented in the Technical Memorandum, prepared under Task 3.4.

Consultant assumes the following:

- Up to three (3) potential pump station sites will be studied.
- The pump stations will be submersible pumps with above-grade controls similar to the Country Club Pump Station (on the City's potable water system).
- City's hydraulic modeling consultant will provide pump station hydraulics including suction pressure, discharge head and flow.

#### Task 3.4 Technical Memorandum – Alignment, Storage, and Pump Station Siting Study Findings

Consultant will compile a TM summarizing the findings of Tasks 3.1 – 3.3. In addition, the TM will include:

- An outline of implementation steps (e.g., design, permitting, cross-connection test, etc.); and
- Preliminary implementation schedule.

Consultant assumes that the City review period for the draft Alignment, Storage, and Pump Station Siting Study Findings TM will be no more than two (2) weeks.

**Task 3.5 Technical Memorandum – Cost-Sharing Analysis**

Consultant will prepare a TM summarizing the effort required to complete the alignment study, pump station siting study, and conceptual design outlined in Tasks 2 – 3.4 and to analyze the amount of potential cost-sharing to be incurred by each Project partner and for each phase.

Consultant assumes the following:

- Entities that are potential City of Milpitas partners to be included in the TM: Santa Clara Valley Water District (SCVWD), Caltrans, Milpitas Unified School District, Santa Clara County and the two hillside golf courses.
- The City review period for the draft Cost-Sharing Analysis TM will be no more than two (2) weeks.

**Task 3 Deliverables:**

- Draft Technical Memorandum – Alignment, Storage, and Pump Station Siting Study Findings (.docx format).
- Final Technical Memorandum – Alignment, Storage, and Pump Station Siting Study Findings (.pdf format).
- Draft Technical Memorandum – Cost-Sharing Analysis (.docx format)
- Final Technical Memorandum – Cost-Sharing Analysis (.pdf format)

**Task 4: CEQA-Plus**

Consultant will prepare a Mitigated Negative Declaration (MND) for the Project in compliance with the California Environmental Quality Act (CEQA). Consultant recommends including federal cross-cutting analysis in the MND, often referred to as “CEQA-Plus” documentation, which provides the City with streamlined CEQA clearance should federal or State Revolving Fund (SRF) financing be sought for construction. In order to meet the City’s schedule, this scope of work assumes that all five phases of the recycled water expansion will be included in the “project” evaluated under CEQA. The work will be completed under the following tasks.

**Task 4.1 Project Description and Initial Study**

Consultant will prepare a Project description suitable for CEQA compliance based on Task 3 findings as development of the technical memorandum progresses. An electronic copy of the Project description will be provided to the City for review. Once the City has approved the Project description, Consultant’s team will conduct a site reconnaissance visit to identify existing land uses and environmental conditions within the Project area.

Consultant will prepare an Initial Study in compliance with Appendix G of the CEQA Guidelines that identifies the potential environmental impacts of the Project, including brief supplemental comments which concisely describe those impacts and identify where mitigation is necessary. The Initial Study will be organized by CEQA resource category and impacts will be identified for each Project component. This scope of work assumes that completion of an Initial Study will result in the conclusion that an MND is the appropriate CEQA compliance document for the proposed Project.

If the Initial Study results determines that additional environmental review and an Environmental Impact Report is required, the parties will meet and discuss how best to move forward.

Due to the location of the Project being within existing disturbed areas and primarily within existing streets, detailed analysis is not expected to be necessary to support the conclusion that the Project would not have significant impacts on aesthetics (i.e., Project-specific renderings of pump stations are not included in the scope), recreation, utilities and service systems, public services, energy, geology and soils, hydrology and water quality, mineral and energy resources, or agricultural resources. Issues of concern will be evaluated in greater detail. Impacts associated with air quality and traffic are expected to be largely confined to the construction period, and short-term traffic impacts would be treated as less than significant with incorporation of standard mitigation such as a traffic control plan. It is assumed that pump stations can be sited and designed so as to avoid issues with land use compatibility and operational noise impacts on any nearby sensitive receptors. Consultant assumes that up to three potential pump station locations studied in Task 3.3 will be included in the environmental studies.

#### Task 4.2 Environmental Investigations

Consultant's subconsultant (Rincon Consultants) will prepare a stand-alone Biological Resources Assessment that identifies and assesses potential impacts to biological resources from the Project. Preparation of the Biological Resources Assessment will include general site surveys to characterize vegetation and sensitive species that may occur adjacent to Project facilities. This scope assumes that identification of potential special-status species habitat is based on a suitability analysis level and does not include definitive surveys for the presence or absences of species that may be present. The Biological Resources Assessment will evaluate the Project's compliance with state and federal biological resource regulations. For the purposes of this scope and fee estimate, Consultant assumes that there are no major biological issues along the alignments. If further studies are determined to be necessary to address special-status biological resources that are identified onsite, Consultant is prepared to coordinate with the City of Milpitas and applicable regulatory agencies to determine additional requirements; those further studies and coordination are not included as part of this scope and fee estimate.

Consultant's subconsultant (Rincon Consultants) will prepare a stand-alone Cultural Resources Assessment that identifies and assesses potential impacts to archeological, paleontological, and historical resources from the Project. Preparation of the Cultural Resources Assessment will include pedestrian surveys to determine the potential occurrence of archeological and cultural resources adjacent to Project facilities. The cultural resources analysis will include an analysis of all the alternative alignments, and a 0.5-mile radius around the alignments per eligibility requirements for SRF funding. For the purposes of this scope and fee estimate, Consultant assumes that the pedestrian survey will not identify any cultural resources that require recordation or updating. Should any cultural resources be identified during the survey, the budget would need to be augmented to record or update the resources. No subsurface testing will be conducted, nor will any artifacts, samples, or specimens be collected during the survey. A separate Section 106 Format Technical Report for use in National Historic Preservation Act consultation will be prepared. This scope assumes that minimal coordination with applicable federal agencies will take place as part of the Section 106 analysis.

Consultant will complete a stand-alone General Conformity Report for the Clean Air Act which addresses construction and operational air quality emissions in accordance with federal standards.

Consultant assumes that the new pump station will consist of underground submersible pumps with control panels above grade. As such, a separate aesthetic analysis will not be conducted.

The MND will also identify necessary permits with other State and local public agencies that might be affected by the Project. This scope assumes that the City of Milpitas will be responsible for securing permits, easements, and any other agreements necessary to move the Project forward.

Findings from the Biological Resources Assessment, Cultural Resources Assessment, and General Conformity Report will be incorporated into the MND. An electronic copy of the Administrative Draft MND will be provided to the City for review.

#### Task 4.3 Prepare Public Draft MND and Notices

Consultant will respond to comments received from City staff and revise the Administrative Draft MND accordingly for review as the Screencheck Draft MND. An electronic copy of the Screencheck Draft MND will be provided to the City for review. Consultant will respond to final comments received from City staff and finalize the Screencheck Draft MND accordingly for release as the Public Draft MND. This scope of work assumes that City comments received on the Screencheck Draft MND will be limited to editorial and formatting changes, not new substantive analysis. An electronic copy and up to 10 hard copies of the Public Draft MND will be provided to the City.

Consultant will prepare a draft Notice of Intent (NOI) to adopt an MND in accordance with CEQA Guidelines §15072. Consultant will work with the City to identify the list of interested parties and responsible agencies who will receive the NOI. Consultant will finalize and publish the NOI in the newspaper and will be responsible for reproduction and distribution of the NOI to interested parties, responsible agencies, the County Clerk, and the State Clearinghouse.

#### Task 4.4 Prepare Final MND, Mitigation Plan, and Notices

Following receipt of public comments, Consultant will develop a matrix of comments received and recommended responses. As necessary and directed by the City, Consultant will revise the Public Draft MND based on comments received during the public review period. An electronic copy of the Public Draft MND will be provided to the City. This scope of work assumes that the Final MND revisions will not result in identification of significant environmental effects and thus will not require recirculation of the document. If level of effort for responses to comments exceed that estimated in the budget Consultant will submit a request for amendment of scope and budget.

Consultant will prepare a Mitigation Monitoring and Reporting Program (Monitoring Plan) that contains the measures that are required as conditions of Project approval to avoid or reduce potential environmental impacts to less-than-significant levels. For any significant impact identified in the MND, the Monitoring Plan will describe the required mitigation, the tasks and schedule necessary for monitoring compliance, and the entity responsible for each monitoring and reporting task. An electronic copy of the Draft Monitoring Plan will be provided to the City for review. Consultant will respond to comments received from the City and revise the Monitoring Plan accordingly. An electronic copy of the Final Monitoring Plan will be provided to the City.

Consultant will prepare a draft Notice of Determination (NOD) following approval of the Project, in accordance with CEQA Guidelines §15075. Following City review, Consultant will finalize and transmit the NOD to the County Clerk and State Clearinghouse.

#### Task 4.5 Communications and Presentations

Consultant will prepare for and attend up to four (4) Project meetings with the City at key points throughout the Project. The meetings are anticipated to include the following:

- To receive City comments on the Administrative Draft MND (staff meeting)
- To discuss public comments received on the Public Draft MND (staff meeting)
- To present the Final MND and Monitoring Plan to the Planning Commission
- To present the Final MND and Monitoring Plan to the City Council

Consultant will prepare an agenda and meeting notes for each staff meeting and presentations for the Planning Commission and City Council meetings. At a minimum, Consultant's CEQA task lead will attend each meeting. It is assumed that other Project coordination can occur via email and conference calls, which may also include web-based presentations.

#### Task 4 Deliverables

- Draft and final Project Description (.pdf files)
- Draft and final Biological Resources Assessment (.pdf files; Hard copies as appendix to Public Draft MND)
- Draft and final Cultural Resources Assessment (.pdf files; Hard copies as appendix to Public Draft MND)
- Draft and final General Conformity Report (.pdf files; Hard copies as appendix to Public Draft MND)
- Administrative Draft MND for City review (.pdf files)
- Screencheck Draft MND for City review (.pdf files)
- Draft and final Notice of Intent (.pdf files; Hard copies mailed to interested parties, responsible agencies, County Clerk, and State Clearinghouse)
- Public Draft MND and cover letter to the State Clearinghouse for City reproduction and distribution (Microsoft Word and/or .pdf files and up to 10 hard copies)
- Final MND for City approval and certification (.pdf files and up to 10 hard copies)
- Draft and final Monitoring Plan (.pdf files)
- Draft and final Notice of Determination (.pdf files; Hard copies mailed to County Clerk and State Clearinghouse)

#### **Task 5: Proposition 1 Funding Application and Coordination**

Consultant will prepare an application for funding/financing under the Proposition 1 Water Recycling Funding Program (WRFP), administered by the State Water Resources Control Board's Division of Financial Assistance. This scope of work assumes that the application will be generally similar to the existing State Revolving Fund applications as suggested by the draft WRFP Guidelines that are currently available.

Task 5.1 Kickoff and Review Existing Documents

One (1) two-hour kick-off meeting with City staff will be conducted to collect information necessary for the WRFP application. Consultant will prepare an agenda and meeting notes for the staff meeting. It is anticipated that phone calls with City staff will be adequate during preparation of the draft WRFP application and when responding to comments. This task involves a review of existing documents and available background information provided by the City on the Project.

Task 5.2 Prepare Project Report and Technical Package

The majority of the information required for the Project Report is contained in the Technical Memorandum being prepared under Task 3. Consultant will compile the following information in the Project Report format:

- Study area characteristics.
- Water supply characteristics and facilities.
- A cost-effectiveness evaluation of alternative Project concepts.
- An estimate of the total capital costs and annual operation and maintenance costs.
- A map of the service area.
- A written record of the required public meeting. A noticed public meeting is required to obtain public comment on the proposed Project and to discuss financial and environmental factors related to the Project.
- Documentation showing that the applicant has the legal, institutional, managerial, and financial capability to construct the proposed Project and to operate and maintain the Project facilities throughout their service life.
- A discussion of the selected alternative that includes the following:
  - A detailed description of the selected alternative.
  - A statement of the relevant design criteria.
  - The estimated construction cost and annual operation and maintenance cost, and a description of how the local costs will be financed.
  - Dedication of an identified source of revenue to repay the loan (Required for loans only).
  - A discussion of the water quality and other non-monetary benefits of the Project.
  - A discussion of any interagency service agreements necessary to construct, operate, and maintain the system.
- An implementation schedule for completion of the Project.

Consultant will complete an Initial Study on the Project alignment(s) and pump station site(s) under Task 3. Consultant assumes that up to three potential pump station locations (identified in Task 3.3) will be included in the environmental studies.

An electronic copy of a draft Project Report will be provided to the City for review and comment. Consultant will complete the necessary forms, compile it with the Project Report, and provide a review copy for the City. Following incorporation of comments received, an electronic copy of the final Technical Package will be submitted via FFAST (State Water Resources Control Board's online submittal website) to the State Water Resources Control Board (SWRCB). Consultant will

also help the City in responding to any comments and questions received from the SWRCB staff on the Technical Package.

#### Task 5.3 Prepare Environmental Package

The majority of the information required for the Environmental Package is contained in the MND being prepared under Task 4. Consultant will complete the necessary forms, compile it with the MND, and provide a review copy for the City. Following incorporation of comments received, an electronic copy of the final Environmental Package will be submitted via FFAST to SWRCB. Consultant will also help the City in responding to any comments and questions received from the SWRCB staff on the Environmental Package.

#### Task 5.4 Assist with Financial Assistance Package

Consultant will assist the City with preparing the Financial Assistance Package, using financing information and required certificates provided by the City. Consultant's work in Task 3 will provide up-to-date planning-level cost estimates for planning, construction, design, utility relocation, engineering services during construction, contingencies, and additional cash flow needs. Consultant will compile all of the provided materials into a complete Financial Assistance Package.

Consultant will complete the necessary forms, compile forms with the materials provided by the City, and provide a review copy for the City. Following incorporation of comments received, an electronic copy of the final Financial Assistance Package will be submitted via FFAST to SWRCB. Consultant will also help the City in responding to any comments and questions received from the SWRCB staff on the Financial Assistance Package.

#### Task 5 Deliverables

- Agenda and notes for kickoff meeting
- Draft and final Project Report (.pdf files)
- Draft and final Technical Package (.pdf files)
- Draft and final Environmental Package (.pdf files)
- Draft and final Financial Assistance Package (.pdf files)

### **Task 6: Optional Services**

#### Task 6.1 State Revolving Fund Packaging

As stated in Task 5, Consultant assumes that the WRFP application will be generally similar to the existing SRF applications as suggested by the draft WRFP Guidelines that are currently available. This optional services task provides additional budget for preparation of a SRF application package beyond the currently anticipated level of effort. The SRF package would be prepared by repurposing the documents prepared in Tasks 3, 4, and 5 for the Proposition 1 funding application.

#### Task 6.2 Additional Meetings and Coordination

Consultant assumes that ten (10) potential customer meetings and two (2) City meetings will be required under Task 2 to provide Customer Coordination services. This Optional Services Task provides additional meeting and coordination budget for unanticipated meetings.

Consultant assumes that no more than ten (10) additional 2-hour meetings will be required of the Principal-in-Charge, Project Manager, and the Technical, CEQA, and Funding leads.

Task 6.3 Customer Coordination, Service Condition Analysis, and Water Quality Evaluation

As an optional additional service related to Task 2, Consultant will coordinate with potential Phase 3 customers, conduct potential customer site visits, determine service conditions, and complete a water quality evaluation for the potential Phase 3 customers. In addition, Consultant will assist the potential Phase 3 customers with evaluating if they can remove turf for additional water savings.

Consultant will analyze the water use profile for the five identified potential Phase 3 customers from Task 2 including the following:

- Conduct site visits. Site visits assume one (1) two-hour visit per potential Phase 3 customer site with two (2) Consultant team members in attendance;
- Evaluate existing water services and meters and service areas (e.g., restaurants, restrooms, greens, ponds, etc.); and
- Create a figure showing existing meters and water uses, including size of existing pipes and meters.

Consultant will analyze non-potable use, conversion requirements and service conditions for the five identified potential Phase 3 customers including the following:

- Determine Non-Potable Service Conditions for each of the five potential Phase 3 customers by completing the following:
  - Analyze water quality needs including assisting the golf courses in determining if they want to incorporate on-site deionization if recycled water quality is an issue;
  - Determine the minimum pressure required to serve the golf courses non-potable needs;
  - Analyze storage requirements;
  - Develop design considerations for crossing the Hayward Fault including recommended pipe materials, joint types, and isolation valves per the City's seismic design criteria.
- Analyze the requirements for conversion of each potential Phase 3 customer site to recycled water including:
  - Systems and appurtenances to be converted to recycled water;
  - Necessary improvements to the existing domestic and fire water systems (e.g., backflow prevention, break tanks, piping, pumps, check valves, meters, sprinkler head adjustments, turf restorations, recycled water identification tags, etc.); and
  - Typical steps required for cross connection testing.
- Prepare a figure showing preliminary onsite conversion schematics.

Consultant assumes that water use data for each customer for the last 3 – 5 years will be analyzed by City's hydraulic modeling consultant. Consultant assumes that City's hydraulic modeling consultant will provide the pipe sizes required for each of the pipes as well as the elevation required for the storage tank.

Consultant assumes that City's hydraulic modeling consultant will analyze potential non-potable water use for each of the five potential Phase 3 customers to calculate what portion of each customer's water service profile can be converted to recycled water. Consultant assumes that

City's hydraulic modeling consultant will provide a table showing average annual use, peak day use, and hours and days of operation based on metering data and customer provided usage information.

Task 6.3 Deliverables

- Existing meters and water use figure (.pdf format).
- Preliminary site conversion schematics (.pdf format).
- Average annual use, peak day use, and hours and days of operation table (.pdf format).

Task 6.4 Contingency

An Optional Services Contingency Task is included should unanticipated expenses or efforts be required for completion of the Project.

All work shall be completed by June 30, 2016.

**Exhibit A- Attachment 1 Potential Customer List**

Item segment #	Location	Customer Name	Street Address	Serial Number
1A	3008371	City of Milpitas	1331 E Calaveras Blvd	7216731
1B	3015912	City of Milpitas	Cardoza Park Ave	9503049
1C	1 3008530	MUSD/Burnett (1)	Kennedy Dr	4859707
1C	2 3008530	MUSD/Burnett (2)	Kennedy Dr	4859707
3D		Summitpointe Golf Course	Country Club Dr	
3E		Ed Levin Park	Old Calaveras Rd	
3F		Spring Valley Golf Course	Old Calaveras Rd	
4G	3010338	MUSD/Randall	1300 Edsel Dr	7122055
4H		Foothill Park		
4I	1 3010886	MUSD/Rose (1)	300 Roswell Dr	4213813
4I	2 3010886	MUSD/Rose (2)	300 Roswell Dr	4213813
4J	3011560	MUSD/Murphy	Murphy School Dr	5443384
4K	1 3015906	City of Milpitas (1)	511 Platt/Saratoga Ave	4209347
4K	2 3015906	City of Milpitas (2)	511 Platt/Saratoga Ave	4209347
4L	1 3015907	City of Milpitas (1)	1596 Everglades Dr	4963194
4L	2 3015907	City of Milpitas (2)	1596 Everglades Dr	4963194
4M	1 3015902	City of Milpitas (1)	Everglades #511-10 Dr	31937683
4M	2 3015902	City of Milpitas (2)	Everglades #511-10 Dr	31937683
4N	3016037	City of Milpitas	Skyline Park Way	9208565
4O	3016038	City of Milpitas	Fieldcrest Park Way	8030826
4P	3013322	MUSD/Rancho	915 Sequoia Dr	7122119
4R	Unknown	Domestic or Irrigation	Yellowstone East of SPV	
4S	3016039	City of Milpitas	Chipman/Lynwood Dr	8030825
4T	3013622	Hillcrest Terrace HOA	2154 Calle Vista Verde	9703668
4U	3013852	Hillcrest Terrace HOA	Cuesta/Ter HOA	8032030
4V	3013945	Hillcrest Terrace HOA	Ridgemont/Common Dr	7213665
4W	3014085	Hillcrest Terrace HOA	2300 Lynwood Terr	8030836
4X	3014214	Hillcrest Terrace HOA	1357 Terra Alta Dr	9509657
4Y	1 3015908	City of Milpitas	Yellowstone Ave	4363659
4Y	2 3015908	City of Milpitas	Yellowstone Ave	4363659
5Q	1 3015909	City of Milpitas (1)	Creighton Park Ave	4769498
5Q	2 3015909	City of Milpitas (2)	Creighton Park Ave	4769498
4		<b>Montessori School</b>	<b>1500 Yosemite</b>	
4		<b>Sinnott School</b>	<b>2025 Yellowstone</b>	
		<b>City of Milpitas</b>	<b>Yosemite</b>	

EXHIBIT B  
COMPENSATION SCHEDULE

Tasks	Labor																Outside Services			ODCs		Total	
	Principal In Charge	Project Manager	Quality Control	Technical Lead	Technical Support	Technical Support	CEQA Lead	CEQA Support	CEQA Support	Funding Lead	Funding Support	Funding Support	Drafter	Graphics	Julie Yamamoto	Total Hours	Total Labor Costs (1)	Rincon Consultants Inc.	Subtotal	Sub Consultant Total Cost (2)	ODCs	Total ODCs (3)	Total Fee
	Mike Matson	Steve Bui	Marc Nakamoto	Jennifer Glynn	Madison Casserly	Shelly Masuda	Robin Cort	Crystal Benham	Simon Kobayashi	Emmalynne Roy	Courtney Rubin	Sally Johnson	Stephen Jung	Linda Woodrow-Gray	AD-5			Bio/Cultural					
	\$295	\$286	\$244	\$244	\$174	\$162	\$259	\$234	\$146	\$212	\$190	\$162	\$145	\$212	\$130								
Task 1: Project Management																							
1.1 Project Management	8	12		8			8			8					16	60	\$13,592		\$0	\$0	\$100	\$110	\$13,702
Subtotal Task 1:	8	12	0	8	0	0	8	0	0	8	0	0	0	0	16	60	\$13,592	\$0	\$0	\$0	\$100	\$110	\$13,702
Task 2: Coordination with Potential Phase 3 Customers																							
2.1 Customer Meetings		30									24					54	\$13,140		\$0	\$0	\$500	\$550	\$13,690
2.2 City Meetings	2	6									8					16	\$3,826		\$0	\$0	\$100	\$110	\$3,936
2.3 SBWR Coordination				4	8											12	\$2,368		\$0	\$0		\$0	\$2,368
2.4 SWRCB Coordination				4	8											12	\$2,368		\$0	\$0		\$0	\$2,368
Subtotal Task 2:	2	36	0	8	16	0	0	0	0	0	32	0	0	0	0	94	\$21,702	\$0	\$0	\$0	\$600	\$660	\$22,362
Task 3: Alignment, Storage and Pump Station Siting Study TM																							
3.1 Alignment Study	6	16	12	60	80								60			234	\$46,534		\$0	\$0	\$300	\$330	\$46,864
3.2 Phase 3 Storage Recommendations	2	8	4	24	4	32										74	\$15,590				\$100	\$100	\$15,690
3.3 Phase 3 Pump Station Siting Study	2	10	12	24	16	60							24			148	\$28,218		\$0	\$0	\$100	\$110	\$28,328
3.4 Technical Memorandum - Alignment, Storage, & Pump Station Siting Studies	2	12	8	32	60	12							8	8		142	\$29,022		\$0	\$0		\$0	\$29,022
3.5 Technical Memorandum - Cost Sharing Analysis		8	2		16										4	30	\$6,080		\$0	\$0		\$0	\$6,080
Subtotal Task 3:	12	54	38	140	176	104	0	0	0	0	0	0	92	8	4	628	\$125,444	\$0	\$0	\$0	\$500	\$540	\$125,984
Task 4: CEQA-Plus Mitigated Negative Declaration																							
4.1 Project Description and Initial Study		2					8	56	16							82	\$18,084		\$0	\$0	\$120	\$132	\$18,216
4.2 Environmental Investigations		2					8	20	40							70	\$13,164	\$23,000	\$23,000	\$25,300		\$0	\$38,464
4.3 Prepare Public Draft MND and Notices	2	8	4				30	140	84				22			290	\$59,838		\$0	\$0		\$0	\$59,838
4.4 Prepare Final MND, Monitoring Plan, and Notices		2	2				20	32	28							84	\$17,816	\$4,000	\$4,000	\$4,400	\$80	\$88	\$22,304
4.5 Communications and Presentations		6					48	16	16					16		102	\$23,620		\$0	\$0	\$360	\$368	\$24,016
Subtotal Task 4:	2	20	6	0	0	0	114	264	184	0	0	0	22	16	0	628	\$132,522	\$27,000	\$27,000	\$29,700	\$560	\$616	\$162,838
Task 5: Prop 1 Water Recycling Funding Program Application																							
5.1 Kickoff and Review Existing Documents		4								16	12	12				44	\$8,760		\$0	\$0	\$120	\$132	\$8,892
5.2 Prepare Project Report and Technical Package	2	2	2	4						12	20	20				62	\$12,210		\$0	\$0		\$0	\$12,210
5.3 Prepare Environmental Package		2	2							8	12	12				36	\$6,980		\$0	\$0		\$0	\$6,980
5.4 Assist with Financial Assistance Package		2	2							16	24	20				64	\$12,252		\$0	\$0	\$250	\$275	\$12,527
Subtotal Task 5:	2	10	6	4	0	0	0	0	0	52	68	64	0	0	0	206	\$40,202	\$0	\$0	\$0	\$370	\$407	\$40,609
TOTAL TASK 1- 5	26	132	50	160	192	104	122	264	184	60	100	64	114	24	20	1616	\$333,462	\$27,000	\$27,000	\$29,700	\$2,130	\$2,333	\$365,495
Task 6: Optional Services																							
6.1 State Revolving Fund Packaging																0	\$20,000		\$0	\$0	\$250	\$275	\$20,275
6.2 Additional Meetings and Coordination	20	20		20			20			20						100	\$25,920		\$0	\$0	\$500	\$550	\$26,470
6.3 Customer Coordination, Service Condition Analysis and Water Quality Evaluation		18	16	66	90	32							8	16		246	\$50,552		\$0	\$0		\$0	\$50,552
6.4 Contingency																0	\$20,000		\$0	\$0		\$0	\$20,000
Subtotal Task 6:	20	38	16	86	90	32	20	0	0	20	0	0	8	16	0	346	\$116,472	\$0	\$0	\$0	\$750	\$825	\$117,297
TOTAL	46	170	66	246	282	136	142	264	184	80	100	64	122	40	20	1962	\$449,934	\$27,000	\$27,000	\$29,700	\$2,880	\$3,158	\$482,792

1. The individual hourly rates include salary, overhead and profit.  
2. Subconsultants will be billed at actual cost plus 10%.  
3. Other direct costs (ODCs) such as reproduction, delivery, mileage (rates will be those allowed by current IRS guidelines), and travel expenses, will be billed at actual cost plus 10%.  
4. RMC reserves the right to adjust its hourly rate structure and ODC markup at the beginning of the calendar year for all ongoing contracts.

**EXHIBIT C**  
**INSURANCE DOCUMENTS**

**Project Name: Augustine Park and Community Garden Recycled Water Conversion**

**Date: 6-16-2015**

**CONSULTING SERVICES AGREEMENT BETWEEN  
THE CITY OF MILPITAS AND  
RMC WATER & ENVIRONMENT, INC.**

THIS AGREEMENT for consulting services is made by and between the City of Milpitas, a Municipal Corporation of the State of California (hereafter referred to as "CITY") and RMC Water & Environment, Inc., a California Corporation (referred to herein as the "Consultant") as of June 16, 2015.

**AGREEMENT**

**Section 1. SERVICES.** Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City the services described in the Scope of Work attached as Exhibit A at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

- 1.1 Term of Services.** The term of this Agreement shall begin on the date first noted above and shall end on June 30, 2016, the date of completion specified in Exhibit A, and Consultant shall complete all the work described in Exhibit A prior to that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as provided for in Section 8.
- 1.2 Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement in the manner and according to the professional standards normally observed by a practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession. Consultant shall prepare all work products required by this Agreement in a substantial manner and shall conform to the professional standards of quality normally observed by a person practicing in Consultant's profession.
- 1.3 Professional Skill.** It is mutually agreed by the parties that City is relying upon the professional skill of the consultant as a specialist in the work, and Consultant represents to the City that its work shall conform to the normal professional standards of the profession. Acceptance of the Consultant's work by the City does not operate as a release of Consultant's representations. It is intended that Consultant's work shall conform to normal standards of accuracy, completeness and coordination.
- 1.4 Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. Exhibit A shall name any specific personnel who shall be performing services. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment

of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.

- 1.5 Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.1 above and to complete Consultant's obligations hereunder.

**Section 2. COMPENSATION.** City hereby agrees to pay Consultant a guaranteed maximum price not to exceed Twenty Six Thousand Five Hundred Fifty Nine Dollars (\$26,559) for all services to be performed and reimbursable costs incurred under this Agreement. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City, Consultant shall not bill City for duplicate services performed by more than one person.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Hourly rates for personnel performing services shall be as shown in Exhibit B. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

- 2.1 Invoices.** Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred during the billing period. Invoices shall contain the following information:

- Serial identification of bills;
- The beginning and ending dates of the billing period;
- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion, if applicable;
- At City's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
- The total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder, as well as a separate notice when the total number of hours of work by Consultant and any individual employee, agent, or subcontractor of Consultant reaches or exceeds 800 hours,

which shall include an estimate of the time necessary to complete the work described in Exhibit A;

- The Consultant's signature.

**2.2 Monthly Payment.** City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall have thirty (30) days from the receipt of an invoice that complies with all of the requirements above and is otherwise acceptable to the City to pay Consultant. In the event that an invoice is not acceptable to the City, said invoice shall be returned to Consultant within thirty (30) days of the City's receipt of the invoice with a detailed explanation of the deficiency. City's obligation to pay a returned invoice shall not arise earlier than thirty (30) days after resubmission of the corrected invoice.

**2.3 Total Payment.** City shall pay for the services to be rendered by Consultant pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement.

In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment. In the event that Consultant identifies additional work outside the scope of services specified in Exhibit A that may be required to complete the work required under this Agreement, Consultant shall immediately notify the City and shall provide a written not-to-exceed price for performing this additional work.

**2.4 Hourly Fees.** Fees for work performed by Consultant on an hourly basis shall not exceed the amounts shown on Exhibit B.

**2.5 Payment of Taxes.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any other applicable federal or state taxes.

**2.6 Reimbursable Expenses.** Reimbursable expenses are shown on Exhibit B, and shall not exceed Eighty Seven dollars (\$87.00). Expenses not listed in Exhibit B are not chargeable to City. Reimbursable expenses are included in the total not-to-exceed amount of compensation provided under this Agreement.

**2.7 Payment upon Termination.** In the event that the City or Consultant terminates this Agreement pursuant to Section 8, the City shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets in order to verify costs incurred to that date. The

City shall have no obligation to compensate Consultant for work not verified by logs or timesheets.

- 2.8 Authorization to Perform Services.** The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of a written Notice to Proceed from the City.

**Section 3. FACILITIES AND EQUIPMENT.** Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. City shall make available to Consultant only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

City shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Consultant's use while consulting with City employees and reviewing records and the information in possession of the City. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of City. In no event shall City be obligated to furnish any facility that may involve incurring any direct expense, including but not limited to computer, cellular telephone, long-distance telephone, or other communication charges, vehicles, and reproduction facilities.

If the performance of the work specified in Exhibit A requires destructive testing or other work within the City's public right-of-way, Consultant, or Consultant's subconsultant, shall obtain an encroachment permit from the City.

**Section 4. INSURANCE REQUIREMENTS.** Before beginning any work under this Agreement, Consultant shall procure "occurrence coverage" insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant and its agents, representatives, employees, and subcontractors. Consultant shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects to the City. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement and shall produce said policies to the City upon demand. The cost of such insurance shall be included in the Consultant's price. Consultant shall not allow any subcontractor to commence work on any subcontract until Consultant has obtained all insurance required herein for the subcontractor(s) and provided evidence thereof to City. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution.

- 4.1 Workers' Compensation.** Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per accident. In the alternative, Consultant may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the

Labor Code shall be solely in the discretion of the City Attorney. The insurer, if insurance is provided, or the Consultant, if a program of self-insurance is provided, shall waive all rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

An endorsement shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

## **4.2 Commercial General and Automobile Liability Insurance.**

**4.2.1 General requirements.** Consultant, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

**4.2.2 Minimum scope of coverage.** Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (ed. 11/88) or Insurance Services Office form number GL 0002 (ed. 1/73) covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (ed. 12/90) Code 1 ("any auto"). No endorsement shall be attached limiting the coverage.

**4.2.3 Additional requirements.** Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:

- a. City and its officers, employees, agents, contractors, consultants, and volunteers shall be covered as insureds with respect to each of the following: liability arising out of activities performed by or on behalf of Consultant, including the insured's general supervision of Consultant; products and completed operations of Consultant;

premises owned, occupied, or used by Consultant; and automobiles owned, leased, or used by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to City or its officers, employees, agents, contractors, consultants, or volunteers.

- b. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- c. An endorsement must state that coverage is primary insurance with respect to the City and its officers, officials, employees, contractors, consultants, and volunteers, and that no insurance or self-insurance maintained by the City shall be called upon to contribute to a loss under the coverage.
- d. Any failure of CONSULTANT to comply with reporting provisions of the policy shall not affect coverage provided to CITY and its officers, employees, agents, and volunteers.
- e. An endorsement shall state that coverage shall not be suspended, voided, or canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

**4.3 Professional Liability Insurance.** If Consultant shall be performing licensed professional services, Consultant shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000) covering the licensed professionals' errors and omissions.

**4.3.1** Any deductible or self-insured retention shall not exceed \$150,000 per claim.

**4.3.2** An endorsement shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

**4.3.3** The policy must contain a cross liability clause.

**4.3.4** The following provisions shall apply if the professional liability coverages are written on a claims-made form:

- a. The retroactive date of the policy must be shown and must be before the date of the Agreement.

- b. Insurance must be maintained and evidence of insurance must be provided for at least three years after completion of the Agreement or the work, unless waived in writing by the City.
- c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant must provide extended reporting coverage for a minimum of five years after completion of the Agreement or the work. The City shall have the right to exercise, at the Consultant's sole cost and expense, any extended reporting provisions of the policy, if the Consultant cancels or does not renew the coverage.
- d. A copy of the claim reporting requirements must be submitted to the City prior to the commencement of any work under this Agreement.

#### **4.4 Requirements for All Policies.**

**4.4.1 Acceptability of insurers.** All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A.

**4.4.2 Verification of coverage.** Prior to beginning any work under this Agreement, Consultant shall furnish City with certificates of insurance and with original endorsements effecting coverage required herein. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The City reserves the right to require complete, certified copies of all required insurance policies at any time.

**4.4.3 Subcontractors.** Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

**4.4.4 Deductibles and Self-Insured Retentions.** Consultant shall disclose to and obtain the approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement.

During the period covered by this Agreement, only upon the prior express written authorization of the City, Consultant may increase such deductibles or self-insured retentions with respect to City, its officers, employees, agents, contractors, consultants, and volunteers. The City may condition approval of an increase in deductible or self-insured

retention levels with a requirement that Consultant procure a bond, guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to the City.

**4.4.5 Notice of Reduction in Coverage.** In the event that any coverage required by this section is reduced, limited, or materially affected in any other manner, Consultant shall provide written notice to City at Consultant's earliest possible opportunity and in no case later than five days after Consultant is notified of the change in coverage.

**4.5 Remedies.** In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Consultant's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or
- Declare Consultant in material breach of the Agreement and terminate the Agreement.

**4.6 Waiver.** The Risk Manager of the City has the authority to waive or vary any provision of Sections 4.2 through 4.5. Any such waiver or variation shall not be effective unless made in writing.

**Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.** Consultant shall indemnify, defend with counsel reasonably acceptable to the City, and hold harmless the City and its officials, officers, employees, agents, contractors, consultants, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts or omissions of Consultant or its employees, subcontractors, or agents, by acts for which they could be held strictly liable, or by the quality or character of their work. The foregoing obligation of Consultant shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the negligence or willful misconduct of the City or its officers, employees, agents, contractors, consultants, or volunteers and (2) the actions of Consultant or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778

of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

**Section 6. STATUS OF CONSULTANT.**

- 6.1 Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3. Otherwise, City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.
- 6.2 Consultant No Agent.** Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

**Section 7. LEGAL REQUIREMENTS.**

- 7.1 Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.

- 7.3 **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.
- 7.4 **Licenses and Permits.** Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to City that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions and to perform this Agreement. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid business license from City.
- 7.5 **Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Consultant shall include the provisions of this Subsection in any subcontract approved by the City or this Agreement.

## **Section 8. TERMINATION AND MODIFICATION.**

- 8.1 **Termination.** City may terminate this Agreement at any time and without cause upon written notification to Consultant.

In the event of termination, Consultant shall be entitled to compensation for services performed prior to the effective date of termination as provided in Section 2. City, however, may condition payment of such compensation upon Consultant delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement.

- 8.2 **Extension.** City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein.

Consultant understands and agrees that, if City grants such an extension, City shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the City, City shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.

**8.3 Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.

**8.4 Assignment and Subcontracting.** City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the City. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors listed in the Consultant's proposal, without prior written approval of the City.

**8.5 Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.

**8.6 Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, any or all of the following:

**8.6.1** Immediate cancellation of the Agreement;

**8.6.2** Retention of the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement prior to cancellation; and

**8.6.3** Retention of a different consultant at Consultant's cost to complete the work described in Exhibit A not finished by Consultant.

## **Section 9. KEEPING AND STATUS OF RECORDS.**

**9.1 Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City at any time upon demand of the City. It is understood and agreed that the documents and other

materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. Failure by Consultant to deliver these documents to the City within the time period specified by the City shall be a material breach of this Agreement. City and Consultant agree that, until final approval by City, all data, plans, specifications, reports and other documents are preliminary drafts not kept by the City in the ordinary course of business and will not be disclosed to third parties without prior written consent of both parties.

**9.2 Consultant's Books and Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.

**9.3 Inspection and Audit of Records.** Any records or documents that Section 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of three (3) years after final payment under the Agreement.

## **Section 10 MISCELLANEOUS PROVISIONS.**

**10.1 Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

**10.2 Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Santa Clara or in the United States District Court for the Northern District of California.

**10.3 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

- 10.4 No Implied Waiver of Breach.** The waiver of performance or any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.
- 10.6 Use of Recycled Products.** Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.
- 10.7 Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a “conflict of interest,” as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

Consultant hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the City. If Consultant were an employee, agent, appointee, or official of the City in the previous twelve months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code §1090 *et seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, may be disqualified from holding public office in the State of California.

Consultant certifies that it has not paid any direct or contingent fee, contribution, donation or consideration of any kind to any firm, organization, or person (other than a bona fide employee of Consultant) in connection with procuring this Agreement, nor has Consultant agreed to employ or retain any firm, organization, or person in connection with the performance of this Agreement as a condition for obtaining this Agreement.

- 10.8 Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.

- 10.9 Contract Administration.** This Agreement shall be administered by City Engineer who is authorized to act for, and on behalf of, City. All correspondence shall be directed to or through the Contract Administrator or his or her designee.
- 10.10 Notices.** Any written notice to Consultant shall be sent to:
- Steve Bui  
RMC Water and Environment  
100 West San Fernando Street, Suite 320  
San Jose, CA 95113
- Any written notice to City shall be sent to:  
Steven Machida, Director of Engineering  
455 East Calaveras Boulevard  
Milpitas, California 95035
- 10.11 Professional Seal.** Where applicable in the determination of the City, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.
- 10.12 Integration.** This Agreement, including the exhibits, represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.
- 10.13 Exhibits.** All exhibits referenced in this Agreement are incorporated by reference herein.

Augustine Park and Community Garden Recycled Water Conversion

CITY OF MILPITAS

CONSULTANT

\_\_\_\_\_  
Thomas C Williams, City Manager

\_\_\_\_\_  
Taxpayer Identification Number

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael J. Ogaz, City Attorney

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Steven J. Machida, Director of Engineering8

APPROVED:

\_\_\_\_\_  
Emma Karlen, Finance Director/Risk Manager

**EXHIBIT A****SCOPE OF SERVICES FOR AUGUSTINE PARK AND COMMUNITY GARDEN  
CONVERSION TO RECYCLED WATER**

Consultant shall provide design services for the Augustine Park Recycled Water Retrofit project (Project). The Project involves the retrofit conversion of an existing irrigation system at Augustine Park and an existing adjacent community garden each to be served with recycled water. The Project also includes design of a new potable water service line to serve a drinking fountain, sink and hose bib in the community garden per State Water Board – Division of Drinking Water (DDW) requirements and the design of a new sanitary sewer lateral to take the waste water from the new community garden sink to the City's sewer system. The Project is a part of the City of Milpitas' efforts to respond to the ongoing drought by offsetting potable water used for irrigation.

**Scope of Work***Task 1 – Concept Design*

- Project Management: Consultant shall provide coordination and management of the Project, including coordinating with the City's designated Project Manager. Consultant shall provide monthly invoices detailing dollar amount budgeted for each task and dollar amount spent.
- Data Review: Following the Notice to Proceed, Consultant will review irrigation plans for the park and community garden, which will be provided by the City.
- Field Visit: Within one (1) week of issuance of the Notice to Proceed, Consultant will coordinate with the City, prepare for, and attend a field visit to Augustine Park and the community garden. The purpose of this field visit will be to test meters, verify the presence of existing fixtures served with potable water, and to confirm the location of the community gardens sink(s), drinking fountain(s) and hose bib(s) that will remain on potable water service after the recycled water conversion.
- Concept Design: Using retrofit plans for Augustine Park (prepared in 2003 by others) as a starting point, Consultant will prepare concept design plans for the recycled water conversion of Augustine Park. Consultant will prepare new concept retrofit plans for the community garden conversion and for the proposed potable water lateral. Consultant will obtain and review available onsite plans (domestic water and irrigation) from City staff. The concept plans will include:
  - Proposed location of the new potable water service line;
  - Proposed location of the new sanitary sewer lateral;
  - Proposed location of the community garden fixtures to remain on potable water service after the recycled water conversion;
  - Direction on the how to connect the recycled water service to the irrigation system and how to maintain potable service to the potable system. Identify connections to the existing potable water meter(s) or the new recycled water meter;

*Assumptions*

## Augustine Park and Community Garden Recycled Water Conversion

- Consultant assumes that the City will complete all work associated with DDW permitting and coordination with South Bay Water Recycling.
- Consultant is not responsible for any retrofit of the existing irrigation system for recycled water. Any irrigation system improvements to adjust for overspray will be completed by City Parks Staff as part of ongoing maintenance.
- Consultant assumes that utility research and coordination will be completed by the City or deferred to the contractor. Consultant also assumes that the City will provide mapping for street right of way at services and laterals.

### *Task 2 – Final Design*

If the City determines that the Concept Design prepared in Task 1 is sufficient for permitting and for City crews to complete the retrofit, the City may choose to not to complete final design. However, if the City determines that more information is needed to obtain necessary permits and/or if the Project will go out to bid, Consultant will undertake the following work:

- Project Management: Consultant shall provide coordination and management of the Project, including coordinating with the City's designated Project Manager. Consultant shall provide monthly invoices detailing dollar amount budgeted for each task and dollar amount spent.
- Consultant will prepare and submit final stamped design plans for bidding. Final design plans will include:
  - Utility research for up to six (6) utility agencies. The schedule assumes that utility agencies will be responsive within two weeks of requests for information.
  - Final design and location of the proposed 1" – 2" potable water pipeline to be installed via impact mole to serve the community garden;
  - Final design and location of the proposed new fixtures to be served from the potable water service after the recycled water conversion;
  - Proposed signage locations to meet Title 22, Article 4 Use Area Requirements.
- Consultant will prepare and submit City boilerplate specifications, modified specifically for the Project.

All work shall be completed by June 30, 2016.

## EXHIBIT B

## COMPENSATION SCHEDULE

Tasks	Labor						Total Hours	Total Labor Costs (1)	ODCs		Total Fee
	Steve Bui	Marc Nakamoto	Courtney Rubin	Madison Casserly	Steph n Jung	Julie Yamamoto			ODCs	Total ODCs (3)	
	PIC EPS-12	QC EPS-9	PE EPS-4	PE EPS-3	CAD TECH-4						
	\$286	\$244	\$190	\$174	\$145	\$130					
<b>Task 1: Preliminary Design</b>											
1.1 Project Management	2			4		2	8	\$1,528	\$40	\$44	\$1,572
1.2 Field Visit			8	10			18	\$3,260	\$40	\$44	\$3,304
1.3 Preliminary Design Plans - Augustine Park, Community Gardens, Potable Water Pipeline and Sanitary Sewer		4		24	20		48	\$8,052		\$0	\$8,052
Subtotal Task 1:	2	4	8	38	20	2	74	\$12,840	\$79	\$87	\$12,927
<b>Task 2: Bid Package</b>											
2.1 Project Management	4			4		2	10	\$2,100	\$0	\$0	\$2,100
2.2 Final Design Plans - Augustine Park, Community Gardens, Potable Water Pipeline and Sanitary Sewer		2		16	20		38	\$6,172		\$0	\$6,172
2.3 Final Design Specifications		2		16			18	\$3,272	\$0	\$0	\$3,272
2.4 Utility Research and Coordination				12			12	\$2,088			\$2,088
Subtotal Task 2:	4	4	0	48	20	2	78	\$13,632	\$0	\$0	\$13,632
<b>TOTAL</b>	6	8	8	86	40	4	152	\$26,472	\$79	\$87	\$26,599

**EXHIBIT C**  
**INSURANCE DOCUMENTS**

**SECOND AMENDMENT TO THE AGREEMENT FOR  
CONSULTATION AND OTHER SERVICES**

This Amendment is entered into this 16th day of June, 2015, by and between the City of Milpitas, a municipal corporation of the State of California (hereafter referred to as "CITY") and RMC Water & Environment, Inc., a California corporation (hereafter referred to as "CONSULTANT").

**RECITALS**

WHEREAS, the parties entered into an Agreement on October 7, 2014 entitled "Consultant Services Agreement between the City of Milpitas and RMC Water Environment, Inc." ("Agreement") for engineering services in the amount of \$27,734 with an expiration date of June 30, 2015; and

WHEREAS, on April 7, 2015, the parties entered into Amendment No. 1 to the Agreement to increase the scope of work and compensation by \$58,000, for a total not to exceed amount of \$85,734, and extended the term to December 31, 2015; and

WHEREAS, the parties desire to further increase the scope and compensation by \$42,000.

NOW THEREFORE, in consideration of the mutual covenants and conditions herein contained, the parties agree to amend the Agreement as follows:

1. Section 2, entitled "Compensation" of the Agreement is amended in its entirety to read as follows:

Section 2. Compensation. City hereby agrees to pay Consultant an amount not to exceed One Hundred Twenty Seven Thousand Seven Hundred Thirty Four Dollars (\$127,734) for all services to be performed and reimbursable costs incurred under this Agreement. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City, Consultant shall not bill City for duplicate services performed by more than one person. Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Hourly rates for personnel performing services shall be as shown in Exhibit B. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

2. The CONSULTANT agrees to maintain and pay for all insurance policies as stated in Section 4, entitled "Insurance Requirements" of the Agreement dated October 7, 2014,

between CONSULTANT and CITY. The CONSULTANT shall provide CITY with renewal certificates of the current policies upon the expiration of the current policy.

3. All other provisions of the Agreement shall remain in full force and effect.

This Amendment is executed as of the date on the first page.

CITY OF MILPITAS

CONSULTANT

\_\_\_\_\_  
Thomas C. Williams, City Manager

\_\_\_\_\_  
Steve Bui, Principal

APPROVE AS TO FORM:

\_\_\_\_\_  
Steven J. Machida, Director of Engineering

APPROVED

\_\_\_\_\_  
Michael J. Ogaz, City Attorney

City of Milpitas, California

**BUDGET CHANGE FORM**

Type of Change	From		To	
	Account	Amount	Account	Amount
Check one:				
<input checked="" type="checkbox"/> Budget Appropriation	400-2940 401-951-7118-15-3899	\$482,792 \$482,792	400-3999 401-951-7118-1-4800	\$482,792 \$482,792
<input type="checkbox"/> Budget Transfer				

**Explain the reason for the budget change:**

Staff recommends Council to approve four actions to continue the work described in this staff report:

1. Approve a Consultant Agreement with RMC Water and Environment (RMC) to prepare preliminary engineering design documents for planned recycled water pipeline extensions easterly across I-680 and into the Milpitas hillsides. These documents will also serve as the basis for external grant and loan funding applications.
2. Approve a Consultant Agreement with RMC to prepare plans to convert Augustine Park and the Community Garden to recycled water. This effort is included in the proposed Water Conservation Program discussed elsewhere on this agenda.
3. Approve Amendment No. 2 to the Consultant agreement to provide part-time staff assistance.
4. Approve a budget appropriation of \$482,792.

The proposed work is described in more detail below.

1. **Background of the first action CIP No. 7118:** On May 5, 2015, the City Council received a staff report on Water Supply Augmentation, and directed staff to continue with the work plan tasks for conservation, recycled water, and ground water wells. The City planned recycled water pipeline extensions east of I-680 to serve schools, parks, hillside golf courses and general landscaping for an estimated cost of \$37 million. The State is currently developing several funding programs for recycled water projects, and anticipates receiving applications this summer for Proposition 1 and State Revolving Loan funds. Staff reviewed preliminary guidance information and determined that several documents are required to be prepared and submitted with the applications. RMC was selected from the City's list of consultant engineers to prepare these documents for the following reasons: RMC's past experience in preparing these documents for other agencies, RMC is designing the first phase of the recycled water pipeline extension, and RMC recently prepared the Recycled Water Master Plan Update for South Bay Water Recycling and the Santa Clara Valley Water District.

The work consists of reviewing proposed pipeline alignments and hydraulic modeling results, pump station and tank siting, customer coordination and documentation, environmental documents, mapping, preliminary design, construction cost estimates, and preparation of Proposition 1 funding application. Most of these documents are necessary for preliminary engineering design, even if the City were not pursuing outside funding. The work is estimated to cost \$482,792.

**California Environmental Quality Act (CEQA):** The project is exempt under CEQA Guidelines Section 15262 (Feasibility and Planning Studies).

**Alternative:** The consultant agreement and budget appropriation are needed in preparation for the City's application for outside funding for planned recycled water pipeline extensions. If the agreement and appropriation are not approved the project would not proceed.

**Fiscal Impact:** A budget appropriation from the Water Fund is necessary to begin the work. There are sufficient reserves in the Water Fund; however the balance may temporarily drop below the level established by Council policy (30% of operating costs). The proposed water rates include costs for a possible \$15 million bond program. The Water Fund Fund may reimbursed from the water revenue bond proceeds when issued. Staff is also pursuing grants and loans.

2. **Background of the second action CIP No. 7126:** As noted elsewhere on this agenda, the water supply shortage is serious. One aspect of the proposed Water Conservation Program is to convert irrigation sites from potable water to recycled water use. Staff has identified a priority list of City-maintained irrigated sites, such as parks and street medians, currently served by potable water that could be converted to recycled water use. Plans, showing conversion details, must be submitted to South Bay Water Recycling (SBWR) and the State Water Resources Control Board (SWRCB) for approval. Two of the priority sites are Augustine Park and the Community Garden, which are served by a common irrigation meter. Recycled water use for vegetable gardens is allowed by both SBWR and the SWRCB but the SWRCB also requires a potable water sink for vegetable rinsing. The Guadalupe Community Garden located in San Jose has been using recycled water since 2008.

In order to expedite the conversion process, staff has selected two consultants from the Engineering Division's consultant list and recommends dividing preparation of conversion plans between the two consulting firms. RMC Water & Environment was selected for conversion of Augustine Park and the Community Garden. The proposed agreement is in the amount of \$26,559 for a term from June 16, 2015 to June 30, 2016.

**California Environmental Quality Act (CEQA):** The project is exempt under the following Sections of the CEQA Guidelines:

- Section 15302(c) Replacement or reconstruction of existing utility systems and/or facilities involving negligible or no expansion of capacity
- 15303(d) Water main and other utility extensions of reasonable length to serve new construction or conversion of small structures
- 15304(b) Minor alterations to land including new gardening or landscaping, including the replacement of existing conventional landscaping with water efficient or fire resistant landscaping
- 15307 Actions By Regulatory Agencies for Protection of Natural Resources

**Fiscal Impact:** None. The funding for this work is included in the Water Conservation Program discussed elsewhere on this agenda.

3. **Background of the third action:** On October 7, 2014, the City entered into an Agreement with RMC Water and Environment, Inc for support to backfill City staff vacancy in the Utility Engineering Section for water/recycled water distribution and wastewater collection systems through June 30, 2015. The City Council approved Amendment No. 1 for \$58,000 for additional services on April 7, 2015. Staff recommends increasing the agreement in the amount of \$42,000 for continued support anticipated to be needed through December, 2015. This will bring the total value of the agreement to \$127,734. The proposed Amendment No. 2 is included in the Council packet.

**Alternative:** Denial of this request will result in delayed completion of some Utility Engineering tasks. Tasks include but are not limited to: regulatory compliance reporting for water, sewer, and urban runoff programs, developer project plan checking, implementing new water conservation requirements, and participating in and reviewing documentation for regional water, sewer, urban runoff, and solid waste

programs.

**California Environmental Quality Act (CEQA):** This action is not considered a project under CEQA as there will be no direct, or reasonably foreseeable indirect physical change in the environment.

**Fiscal Impact:** None. There are sufficient funds available in the Utility Engineering budget due to salary savings.

4. **Background of the fourth item:** A budget appropriation of \$482,792 from the Water Fund to CIP No. 7118 is necessary to perform preliminary engineering and external funding applications for the recycled water line extensions. Approval of the Water Conservation Program and its budget appropriation discussed elsewhere on this agenda will provide sufficient funding to prepare retrofit plans for Augustine Park and the Community Garden. There are sufficient funds in the Utility Engineering operating budget to cover staff backfill support.

**Recommendations:**

1. Approve the consultant agreement with RMC Water & Environment for engineering services in the amount of \$482,792, CIP No. 7118.
2. Approve consultant agreement with RMC for engineering services in the amount of \$26,559, CIP No. 7126.
3. Approve Amendment No.2 to the Consultant Services Agreement with RMC Water and Environment, Inc for Utility Engineering support in the amount of \$42,000.
4. Approve a budget appropriation of \$482,792 from the Water Fund to CIP No. 7118.

☒ Check if City Council Approval required.

Meeting Date: June 16, 2015

Requested by:	Marilyn Nickel, Associate Civil Engineer	Date: June 6, 2015
Reviewed by: <i>[Signature]</i>	Finance Director: <i>Emma Karlen</i>	Date: <i>6/8/15</i>
Approved by:	City Manager:	Date:
Date approved by City Council, if required:		Confirmed by: